

**REMARKS/ARGUMENTS**

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the following remarks.

Claims 1-39 are pending in this application. Claims 1, 10, 19, 28 and 34 are independent. Claims 1-27 were indicated as allowable in U.S. Application No. 09/690,543, which issued as U.S. Patent No. 6,628,591, which is the subject of the present re-issue application.

The Office Action states that the Reissue Declaration is defective for various reasons. Applicants note that paragraph 7 of the Reissue Declaration recites a statement identifying an error. Paragraph 10 of the Reissue Declaration recites a statement that errors that are being corrected in the reissue application arose without deceptive intent.

Claims 1-39 were rejected on the basis of a defective Reissue Declaration. Applicants respectfully submit that the Reissue Declaration is not defective.

Claims 28 and 29 were rejected under 35 U.S.C. 251 as being improper recapture of broadened claimed subject matter. Applicants respectfully traverse on the grounds that the features of claims 28 and 29 are further recitations of the recording means and random-number generation circuit. Applicants respectfully request that this rejection be withdrawn.

Claims 28-39 were re rejected under 35 U.S.C. §103(a) as allegedly unpatentable in view of U.S. Patent No. 6,226,247 to Sako et al. in view of U.S. Patent No. 6,449,232 to Kuwahara et al.

Independent claim 28 recites, *inter alia*:

“...determining means for determining a type of said optical disc based on in-focus timing and count while said converging means is moved in a focus direction for said optical disc, said in-focus timing and count being detected according to said reflected light beam detected by said detecting means; and

control means for inhibiting said recording means from recording information reproduced from said optical disc in said storage medium according to the determination result.”  
(emphasis added)

As understood by Applicants, neither Sako nor Kuwahara, as applied by the Examiner, do not teach or suggest the above-identified features of claim 28. Specifically, the combination of references fails to teach or suggest the control means, as recited in independent claim 28.

For the above-stated reasons, Applicants respectfully submit that independent claim 28 is patentable.

Independent claim 34 is similar in scope to claim 28 and is believed patentable for similar reasons.

The other claims in this application are each dependent from one of the independent claims discussed above and are therefore believed patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

### **CONCLUSION**

In the event the Examiner disagrees with any of statements appearing above with respect to the disclosures in the cited reference, it is respectfully requested that the Examiner specifically indicate those portions of the reference providing the basis for a contrary view.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

In view of the foregoing amendments and remarks, it is believed that all of the claims in this application are patentable and Applicants respectfully request early passage to issue of the present application.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP  
Attorneys for Applicants

By Thomas F. Presson  
Thomas F. Presson  
Reg. No. 41,442  
(212) 588-0800